

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x CV 12-3675

MARY MAONE, on behalf of herself
and all other similarly situated consumers,

Plaintiffs ANSWER

-against-

RICHARD SOKOLOFF,

Defendant

-----x

Defendant, RICHARD SOKOLOFF (“Defendant”), by his attorney ROBERT L. ARLEO, ESQ., answering the Plaintiff’s Complaint dated July 2, 2012 (“hereinafter Plaintiff’s Complaint”), sets forth as follows:

1. In regard to the allegations set forth in paragraph 1 of Plaintiff’s Complaint, admit that the herein action was commenced under the Fair Debt Collection Practices Act (hereinafter “FDCPA”) but otherwise deny that the Defendant committed any violations of the FDCPA.

2. In regard to the allegations set forth in paragraphs 8 and 9 of the Plaintiff’s Complaint, leave to the Court all determinations in regard to proper jurisdiction and venue.

3. Admit the allegations set forth in paragraphs 2, 3, 4, 5, 6, 7, 10, 11, 17, 18 and 21 of the Plaintiff's Complaint.
4. Deny the allegations set forth in paragraphs 15, 19, 20, 30 and 31 of the Plaintiff's Complaint.
5. In regard to the allegations set forth in paragraphs 12, 13, 14 and 22 of the Plaintiff's Complaint refer to those case citations set forth therein for the accuracy of the assertions set forth in said paragraph.
6. In regard to the allegations set forth in paragraph 16 of the Plaintiff's Complaint deny said allegations as same are not applicable to the Defendant as he devotes meaningful attorney review to each and every creditor file received by his office prior to the time that any debt collection communication regarding any file is sent or effected as the Defendant reviews each and every debt collection communication prior to signing and sending same to any particular consumer such as the Plaintiff herein.
7. In regard to the allegations set forth in paragraph 23 of the Plaintiff's Complaint refer to each and every paragraph set forth heretofore herein.
8. In regard to the alleged class action allegations set forth in paragraphs 23, 24, 25, 26, 27, 28, and 29 of the Plaintiff's Complaint deny that the herein action can satisfy the requirements for class certification as same are set forth in Fed. R. Civ. P. 23.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. Any violation of the FDCPA was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. The Fair Debt Collection Practices Act (FDCPA) is designed to provide information that helps consumers chose intelligently and by definition immaterial information neither contributes to that objective (if the statement is correct) nor undermines it (if the statement is incorrect).

11. A statement cannot mislead unless it is material, so a false but not material statement is not actionable under the FDCPA.

12. The herein Plaintiff does not allege any substantial error with respect to how her debt is set forth in the collection letter for which she complains.

13. The Plaintiff further fails to allege that she relied upon or was misled by the “Attorney at Law” reference set forth in the collection letter for which she complains.

14. The Plaintiff does not deny the existence of the amount of the debt set forth in the collection letter.

15. The Plaintiff's Complaint does not set forth a denial that Plaintiff owed the debt nor does she claim that the Defendant misstated or misrepresented the amount which she owed.

16. The Plaintiff's Complaint fails to allege that the letter influenced her decision or ability to pay or challenge the debt.

17. As a result of all of the foregoing the best the Plaintiff can hope to prove is that the letter contains a false but not material statement that is not actionable under the FDCPA.

DATED: September 30, 2012

/ s / Robert L. Arleo
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